MOHD FAIZAL MUSA v. MENTERI KESELAMATAN DALAM NEGERI

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
AHMADI ASNAWI JCA
ZALEHA YUSOF JCA
[CIVIL APPEAL NO: W-01(A)-336-08-2016]
10 JANUARY 2018

ADMINISTRATIVE LAW: *Judicial review – Application to quash Minister's order prohibiting books – Contents of books related to Islamic law matters – Whether books prejudicial to public order – Whether reasonable for Minister to place reliance on decision of Jawatankuasa Fatwa – Whether Minister's decision in making order valid, rational, and reasonable – Whether there was procedural impropriety – Whether order contravened books' author's constitutional and fundamental rights – Printing, Presses and Publications Act 1984, s. 7(1) – Federal Constitution, arts. 8 & 10*

CONSTITUTIONAL LAW: *Fundamental liberties – Freedom of speech – Minister's order prohibiting books – Contents of books related to Islamic law matters – Whether books prejudicial to public order – Whether reasonable for Minister to place reliance on decision of Jawatankuasa Fatwa – Whether Minister's decision in making order valid, rational, and reasonable – Whether there was procedural impropriety – Whether order breached books' author's constitutional and fundamental rights of freedom of speech – Printing Presses and Publications Act 1984, s. 7(1) – Federal Constitution, arts. 8 & 10*

The respondent had issued an order, pursuant to s. 7(1) of the Printing Presses and Publications Act 1984 ('the Act'), prohibiting the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of four books ('the books') written by the appellant ('the order') on the ground that the books were prejudicial to public order and security. In arriving at such a decision, the respondent had relied on the decision of Jawatankuasa Fatwa and the recommendations of Bahagian Kawalan Penerbitan dan Teks al-Quran and Jabatan Kemajuan Islam Malaysia ('JAKIM'). The appellant's application for judicial review at the High Court, to challenge the order, was unfruitful. In dismissing the appellant's application, the High Court Judge ('the HCJ') opined that (i) the order to ban the books under s. 7(1) of the Act was lawful; (ii) the fact that there was no actual occurrence of public disorder, during the four and seven years the books had been in circulation, ought not to be made the correct test in determining the legality of the order as the phrase 'prejudicial to public order' under s. 7(1) of the Act does not necessarily refer to the existence of

an actual public disorder but includes anything which has the potential to disrupt public order; and (iii) the appellant's argument that his right under art. 8 of the Federal Constitution ('the FC') had been infringed could not be sustained as this right was not absolute. Hence, the present appeal. The issue that arose for the court's adjudication was whether the order suffered from illegality, irrationality, procedural impropriety and unreasonableness.

Held (allowing appeal with costs)
Per Zaleha Yusof JCA delivering the judgment of the court:

(1) The order described the books as 'likely to be prejudicial to public order'. The HCJ viewed that the phrase 'prejudicial to public order' did not necessarily refer to the existence of an actual public disorder, but included anything which had the 'potential to disrupt public order'. The emphasis ought to be put on the words 'likely to be prejudicial to' and not merely 'prejudicial to public order' as s. 7(1) of the Act provides for two situations, namely (i) where the publication is prejudicial to public order; and (ii) where it is likely to be prejudicial to public order. If 'it is likely to be prejudicial to public order', the facts need to be examined to see whether there was any convincing evidence for such potential to happen. The HCJ did not explain what was the 'potential'. (paras 21 & 24)

(2) It could not be understood how the books could create public disorder or a threat to security. Merely stating that the respondent was following the decision of Jawatankuasa Fatwa was not sufficient to prove that the books were likely to be prejudicial to public order and security as the Jawatankuasa Fatwa's decision had not mentioned the books. To state that the prohibition was on the recommendation of Bahagian Kawalan Penerbitan dan Teks al-Quran and on the advise of the experts from JAKIM, without showing more, was also not enough to show that the books were likely to be prejudicial to public order and security. Such statement became bare assertion especially so when the prohibition is being challenged by the appellant. (paras 38 & 40)

(3) The prohibition of the whole four books was a very drastic act, irrational, unreasonable, disproportionate and tainted with procedural impropriety. Even if indeed it was true that a few lines showed the books were likely to be prejudicial to public order and security, the question arose was whether it was justified for the respondent to prohibit the whole four books. Under s. 2 of the Act, 'publication' is defined not only to include a book but also a document. 'Document' is defined, *inter alia*, as paper on which is printed, typed, written and also includes book. As such, if certain pages of the books were found to offend s. 7(1) of the Act, the Act allows for the removal of these pages which are 'documents' and thus 'publication' under the Act. (para 43)

(4) The order was not made in accordance with s. 7(1) of the Act and was therefore illegal. The order was a restriction on the appellant's constitutional and fundamental rights to freedom of expression. Article 8 of the FC provides for equality before the law for all Malaysian citizens while art. 10 allows the right to freedom of speech and expression. Although the rights conferred under the articles are not absolute as, pursuant to art. 10(2) of the FC, Parliament is empowered to restrict these rights through the provisions of the law, the court must nonetheless give primacy to it. Only in the clearest case of potential prejudice to public order that this right could be suppressed, which was not so in the present case. (paras 17 & 44)

Bahasa Malaysia *Headnotes*

Responden telah mengeluarkan satu perintah, bawah s. 7(1) Akta Mesin Cetak dan Penerbitan 1984 ('Akta'), melarang pencetakan, pengimportan, penghasilan, penghasilan semula, penerbitan, penjualan, pengeluaran, pengelilingan, pengedaran atau pemilikan empat naskhah buku ('buku-buku tersebut') yang ditulis oleh perayu ('perintah tersebut') atas alasan buku-buku tersebut memudaratkan ketenteraman dan keselamatan awam. Dalam mencapai keputusan tersebut, responden bersandar pada keputusan Jawatankuasa Fatwa dan cadangan-cadangan Bahagian Kawalan Penerbitan dan Teks al-Quran dan Jabatan Kemajuan Islam Malaysia ('JAKIM'). Permohonan perayu bagi semakan kehakiman di Mahkamah Tinggi, untuk mencabar perintah tersebut, tidak berjaya. Menolak permohonan perayu, Hakim Mahkamah Tinggi ('HMT') berpendapat (i) perintah pengharaman buku-buku tersebut bawah s. 7(1) Akta adalah sah; (ii) fakta bahawa tidak berlaku kekacauan awam, sepanjang empat dan tujuh tahun buku tersebut diedarkan, tidak sepatutnya dijadikan ujian yang betul dalam menentukan kesahan perintah tersebut kerana ungkapan 'memudaratkan ketenteraman awam' bawah s. 7(1) Akta tidak semestinya merujuk kewujudan kekacauan awam sebenar tetapi meliputi apa-apa yang berpotensi mengganggu ketenteraman awam; dan (iii) hujahan perayu bahawa haknya bawah per. 8 Perlembagaan Persekutuan ('PP') telah dicabuli tidak boleh diterima kerana hak ini bukan hak mutlak. Maka timbul rayuan ini. Isu berbangkit yang perlu diputuskan oleh mahkamah adalah sama ada perintah tersebut tidak sah, tidak rasional, tidak munasabah dan tatacaranya salah.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Zaleha Yusof HMR menyampaikan penghakiman mahkamah:

(1) Perintah tersebut menggambarkan buku-buku tersebut sebagai 'mungkin memudaratkan ketenteraman awam'. Hakim Mahkamah Tinggi berpendapat bahawa ungkapan 'memudaratkan ketenteraman awam' tidak semestinya merujuk kewujudan kekacauan awam tetapi juga

meliputi apa-apa yang 'mempunyai potensi mengganggu ketenteraman awam'. Penekanan seharusnya diberi pada perkataan-perkataan 'mungkin memudaratkan' dan bukan 'memudaratkan ketenteraman awam sahaja' kerana s. 7(1) Akta memperuntukkan dua situasi iaitu (i) apabila penerbitan memudaratkan ketenteraman awam; dan (ii) apabila penerbitan mungkin memudaratkan ketenteraman awam. Jika 'mungkin memudaratkan ketenteraman awam', fakta-fakta perlu diperiksa untuk melihat sama ada terdapat apa-apa keterangan meyakinkan untuk potensi sedemikian berlaku. Hakim Mahkamah Tinggi tidak menjelaskan apakah 'potensi' ini.

(2) Tidak difahami bagaimana buku-buku tersebut boleh mencetus gangguan awam atau mengugut keselamatan. Sekadar menyatakan responden mengikut keputusan Jawatankuasa Fatwa tidak cukup untuk membuktikan buku-buku tersebut mungkin memudaratkan ketenteraman dan keselamatan awam kerana keputusan Jawatankuasa Fatwa tidak menyebut tentang buku-buku ini. Untuk menyatakan bahawa larangan dibuat berdasarkan cadangan Bahagian Kawalan Penerbitan dan Teks al-Quran dan berdasarkan nasihat pakar-pakar JAKIM, tanpa menghujahkan lebih lanjut, juga tidak cukup untuk menunjukkan buku-buku tersebut mungkin memudaratkan ketenteraman dan keselamatan awam. Penyataan sedemikian adalah dalihan kosong, khususnya apabila larangan dicabar oleh perayu.

(3) Larangan keseluruhan empat buku ini satu langkah yang mendadak, tidak rasional, tidak munasabah, tidak seimbang dan tercemar akibat tatacara yang salah. Jika sememangnya betul beberapa baris menunjukkan buku-buku tersebut mungkin memudaratkan ketenteraman dan keselamatan awam, persoalan yang timbul sama ada wajar responden melarang keseluruhan empat buku ini. Bawah s. 2 Akta, 'penerbitan' ditafsir sebagai bukan sahaja termasuk buku tetapi juga dokumen. 'Dokumen' ditafsir, antara lain, sebagai apa-apa kertas yang padanya ada dicetak, ditaip, ditulis dan ini termasuklah buku. Oleh itu, jika beberapa halaman buku didapati melanggar s. 7(1) Akta, Akta membenarkan penyingkiran halaman-halaman ini iaitu 'dokumen-dokumen' dan susulan itu, 'penerbitan' bawah Akta.

(4) Perintah tersebut dibuat selaras dengan s. 7(1) Akta dan, oleh itu, tidak sah. Perintah tersebut satu sekatan hak perlembagaan dan asasi perayu untuk bebas bersuara. Perkara 8 PP memperuntukkan kesamarataan di sisi undang-undang buat semua warganegara Malaysia manakala per. 10 membenarkan hak kebebasan bercakap dan mengeluarkan fikiran. Walaupun hak-hak yang diberi bawah perkara-perkara ini bukan mutlak kerana bawah per. 10(2) PP, Parlimen mempunyai kuasa menyekat hak-

hak ini melalui peruntukan-peruntukan undang-undang, mahkamah mestilah, walau bagaimanapun, memberi keutamaan padanya. Hanya dalam kes yang nyata berpotensi memudaratkan ketenteraman awam barulah hak ini boleh disekat, dan ini bukanlah keadaannya dalam kes ini.

Case(s) referred to:

Arumugam Kalimuthu v. Menteri Keselamatan Dalam Negeri & Ors [2013] 1 LNS 296 CA ***(refd)***

Darma Suria Risman Saleh v. Menteri Dalam Negeri, Malaysia & Ors [2010] 1 CLJ 300 FC ***(refd)***

Dato' Seri Syed Hamid Syed Jaafar Albar (Menteri Dalam Negeri) v. SIS Forum (Malaysia) [2012] 9 CLJ 297 CA ***(refd)***

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665 CA ***(refd)***

Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs) Malaysia [1969] 1 LNS 65 FC ***(refd)***

Kerajaan Malaysia & Ors v. Nasharuddin Nasir [2004] 1 CLJ 81 FC ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

PP v. Ooi Kee Saik & Ors [1971] 1 LNS 113 HC ***(refd)***

S Rangarajan v. P Jhagivan Ram & Ors 1989 2 SCC 574 ***(refd)***

Sepakat Efektif Sdn Bhd v. Menteri Dalam Negeri & Anor And Another Appeal [2015] 2 CLJ 328 CA ***(refd)***

SK Kader v. State of West Bengal AIR [1972] SC 1647 ***(refd)***

Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors [2014] 6 CLJ 541 FC ***(refd)***

ZI Publication Sdn Bhd v. Timbalan Menteri Dalam Negeri & Ors [2014] 3 MLRH 708 ***(refd)***

Legislation referred to:

Federal Constitution, arts. 8, 10(2)(a)
Printing Presses and Publications Act 1984, ss. 2, 7(1)
Rules of Court 2012, O. 53

For the appellant - Abdullah Abdul Rahman, Nur Syakeera Idora Ahmad Affandi, Derrick Moh Ka Yew; M/s Cheang & Ariff
For the respondent - Shamsul Bolhassan; SFC

[Editor's note: For the High Court judgment, please see Mohd Faizal Musa v. Minister Of Home Affairs [2017] 7 CLJ 352 (overruled).]

Reported by Najib Tamby

JUDGMENT

Zaleha Yusof JCA:

[1] This is an appeal against the decision of the High Court at Kuala Lumpur, dated 8 August 2016, dismissing the appellant's judicial review application seeking to challenge the respondent's order dated 12 February

2015 (the order) to prohibit four books (the four books) written by the appellant, pursuant to sub-s. 7(1) of the Printing Presses and Publications Act 1984 (Act 301).

Parties

[2] The appellant is an academician at the University Kebangsaan Malaysia (UKM) and his current appointment is as a Research Fellow of the Institut Alam dan Tamadun Melayu, UKM, specialising in the areas of comparative literature, creative writing, film and theatre studies and human rights. He holds the Bachelor of Syariah degree from University of Malaya, the Master of Arts (Literature) degree from University Sains Malaysia and the Doctor of Philosophy (PhD) degree from UKM. He has written many books, creative as well as academic, written various articles in academic as well as non-academic journals and presented academic papers at various conferences.

[3] He has received various awards in the field of literature at the state, national and international level, among others by the South East Asia Literature Council as Best Author of the Majlis Sastera Asia Tenggara in 2005 and by the Government of Malaysia as the National Art Award receiver in 2006.

[4] The respondent is the Minister of Home Affairs responsible for Act 301.

The Order

[5] The order which was published in the *Government Gazette* dated 1 April 2015 as P.U (A) 67/2015, *inter alia* reads as follows:

> 2. The printing, importation, production, reproduction, publishing, sale issue, circulation, distribution or possession of the publications described in the Schedule which is likely to be prejudicial to public order and security are absolutely prohibit throughout Malaysia.

The Schedule in P.U (A) 67/2015 described the four books as:

(i) Sebongkah Batu di Kuala Berang

(ii) Karbala

(iii) Tiga Kali Seminggu

(iv) Ingin Jadi Nasrallah.

The Nature Of The Four Books

[6] We have personally perused the four books. We agree with the description of the books by learned counsel for the appellant in his written submissions which we will reproduce *inter alia* as follows:

'Sebongkah Batu di Kuala Berang'

(a) 'Sebongkah Batu Di Kuala Berang' may be classified as an academic work interwoven with narrative written in the Malay language. It is about a group of university students completing their final assignment by producing a documentary drama on the coming of Islam to the Malay Peninsula (Tanah Melayu).

(b) The story on the coming of Islam traces the history of the Terengganu Inscription Stone (Batu Bersurat Terengganu) which in this book is referred to as the block of stone in Kuala Berang (Sebongkah Batu di Kuala Berang). There is a discussion on the coming of Islam to the Java Island through the preaching by Wali Songo. Then, there is a discussion on the hypothesis that the coming of Islam to a few places in the Tanah Melayu, in particular Terengganu, had possibly originated from Persia. The reasons include that the Perso-Arabic script on the Terengganu Inscription Stone is of the Nastaliq calligraphy which tended to be widely used in Persia. Finally, there is a discussion as to whether the early preachers of Islam and early Muslims in Tanah Melayu had been of the Shafie School as well as the Jaafari school.

(c) The author included endnote academic references for the discussions in the book which may be found at pp. 177 to 180 of the book.

'Karbala'

(a) 'Karbala' is essentially a script of a drama or stage play in the Malay language on the famous event in Karbala, Iraq, that befell Hussein ibn Ali, the grandson of Prophet Muhammad (PBUH).

(b) There are four chapters in the book 'Karbala'. The main chapter titled 'Drama' was actually the second publication of the work after it had been published as a monthly series in the *Dewan Sastera* magazine from December 2006 to June 2007.

(c) The second chapter titled 'Wawancara dengan Faisal Tehrani Dalam Majalah Millinia Muslim' was also the second publication of the interview after it had been published in the *Millinia Muslim* magazine in February 2007.

(d) The third chapter titled 'Wawancara dengan Faisal Tehrani Dalam Majalah Dewan Sastera' was also the second publication of the interview after it had been published in the *Dewan Sastera* magazine in March 2007.

(e) The fourth chapter includes the appellant's article 'Sejarah Alternatif Dalam Ta'ziyeh (Iran) dan Boria (Pulau Pinang):

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'Upaya Pemugaran Sejarah Yang Dinafi Penguasa' which originally was the Appellant's paper presented at the International Conference on South East Asian Literature organised by the South East Asian Literature Council and held at Dewan Bahasa dan Pustaka on 27 to 28 November 2007.

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'Tiga Kali Seminggu'

(a) This book is a collection of 15 short stories of various genres in the Malay language, 12 of which had been published in magazines and newspapers.

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(b) Three of the short stories won literary awards including under the 'Islam' category. The titles of these short stories and the details of their publication and/or awards are as follows:

(i) 'Rindu Ini Luar Biasa'. This won the second place for the short story category in the writing competition by Dewan Bahasa dan Pustaka in 2007 in conjunction with its 50th Anniversary.

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(ii) 'Abuya Dongeng Tokoh Yang Memakan Babi'. This had been published in the Utusan Melayu newspaper on 13 October 2008 and 20 October 2008 under the title 'Abuya dan Dongeng Tokoh Yang Memakan Babi'.

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(iii) 'Antiplot' had been published in the Mingguan Malaysia newspaper on 22 June 2008.

(iv) 'Bulan Penuh di Saigon' had won the 12th Islamic Literature Prize organised by Dewan Bahasa dan Pustaka and Yayasan Pelajaran Islam in 2009.

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(v) 'Cinta Medeni' had been published in the Utusan Melayu newspaper on 3 December 2007 and 10 December 2007.

(vi) 'Dangai, Pau dan Maruku' had been published in the *Dewan Siswa* magazine in August 2009.

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(vii) 'Hajah Abidah' had been published in the *Nur* magazine in December 2008.

(viii) 'Latar' had never been published.

(ix) 'Manifesto Mergastua' had been published in the *Dewan Sastera* magazine in June 2009.

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(x) 'Muhammad Ulul Albab' had been published in the Mingguan Malaysia newspaper on 14 June 2009.

(xi) 'Muthupalaniappan' had been published in the *E-Siswa* magazine in May 2009.

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(xii) 'Perlak Emak' had been published in the *Dewan Budaya* magazine in September 2008.

(xiii) 'Tiga Kali Seminggu'. The appellant is not sure whether this had been published elsewhere prior to inclusion in the book.

(xiv) 'Setelah Diciptakan Adam' had won the 11th Islamic Literature Prize organised by Dewan Bahasa dan Pustaka and Yayasan Pelajaran Islam in 2004.

(xv) 'Kegawatan' had never been published.

'Ingin Jadi Nasrallah'

(a) 'Ingin Jadi Nasrallah' is a collection of 33 poems in the Malay language, 13 of which had been published in magazines and newspapers.

(b) The poems in 'Ingin Jadi Nasrallah' which had been published in newspapers and magazines are as follow:

(i) 'Seperti Camar Bosphorus' had been published in the Mingguan Malaysia newspaper on 28.11.2004.

(ii) 'Keretapi Ke Pulau Hujung' had been published in the Mingguan Malaysia newspaper on 18.5.2008.

(iii) 'Lalat di Mimbar Masjid' had been published in the Mingguan Malaysia newspaper on 23.9.2007.

(iv) 'Ingin Jadi Nasrallah' had been published in the *Dewan Sastera* magazine in September 2006.

(v) 'Di Manzil' had been published in the *Dewan Sastera* magazine in August 2004.

(vi) 'Usaha Gigih' had been published in the *Dewan Sastera* magazine in August 2004.

(vii) 'Doa 2' had been published in the *Dewan Sastera* magazine in August 2004.

(viii) 'Sepucuk Surat Berisi Revolusi' had been published in the *Dewan Sastera* magazine in October 2000.

(ix) 'Perempuan Baitul Laham' had been published in the *Dewan Sastera* magazine in November 2003.

(x) 'Bulan Pucat di Bosnia Herzegovina' had been published in the *Dewan Sastera* magazine in October 1995.

(xi) 'Serigala Dalam Susu' had been published in the Mingguan Malaysia newspaper on 28.1.2007.

(xii) 'Balada Orang Berdosa' had been published in the Mingguan Malaysia newspaper on 6.9.1998.

(xiii) 'Jiwa Palestina' had been published in the Mingguan Malaysia newspaper on 6.7.2003.

A **Issue**

[7] Before we deal with the issue, we would like to emphasise that being a judicial review matter, our function here is to examine the conduct of the authority to ensure that it has acted within the scope of its lawful power. Hence, the issue here is whether the impugned order made under sub-s. 7(1) of Act 301 suffers from illegality, irrationality, procedural impropriety and unreasonableness.

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Subsection 7(1) of Act 301

[8] To understand the issue, it is relevant for us to reproduce the said provision of sub-s. 7(1). It reads:

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> If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement, or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the *Gazette* prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

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The Grounds As Stated By The Minister/Respondent

[9] The grounds for the order as found in the "affidavit balasan" at p. 139 of rekod rayuan jld 2(1) are as follows:

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> Merujuk perenggan 19 hingga 22 Afidavit Sokongan Pemohon, saya dengan sesungguhnya percaya bahawa saya telah meneliti syor dan ulasan oleh Bahagian Kawalan Penerbitan dan Teks Al Quran sebelum memutuskan untuk melarang penerbitan 4 Buku tersebut oleh Pemohon. Bagi tujuan menzahirkan alasan-alasan dalam membuat Perintah Larangan tersebut, saya telah mempertimbangkan perkara-perkara berikut:
>
> (a) Bahagian Kawalan Penerbitan dan Teks Al Quran telah mengkaji isi kandungannya dan mendapati 4 Buku tersebut mengandungi unsur-unsur yang mengelirukan umat Islam di negara ini yang dikhuatiri akan menimbulkan ancaman keselamatan serta menggugat ketenteraman awam;
>
> (b) Saya telah merujuk 4 Buku tersebut untuk mendapatkan pandangan dan nasihat daripada pakar-pakar berkaitan agama Islam daripada Jabatan Kemajuan Islam Malaysia (JAKIM) dan saya telah mempertimbangkan kajian yang dikemukakan oleh JAKIM sebelum membuat keputusan;

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(c) Saya juga merujuk kepada keputusan Muzakarah Khas Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam yang telah bersidang pada 5 Mei 1996 yang telah memutuskan seperti berikut:

(i) Menetapkan bahawa umat Islam di Malaysia hendaklah mengikut ajaran Islam serta adalah tertakluk kepada undang-undang Islam Hukum Syarak yang berasaskan pegangan Ahli Sunnah Wal Jamaah;

(ii) Memperakukan bahawa ajaran Islam yang lain daripada Ahli Sunnah Wal Jamaah adalah bercanggah dan penyebaran apa-apa ajaran yang lain adalah dilarang;

(iii) Menetapkan bahawa penerbitan, penyiaran dan penyebaran apa-apa buku, risalah, filem, video dan lain-lain berhubung dengan ajaran yang bertentangan dengan Ahli Sunnah Wal Jamaah adalah diharamkan.

(d) Sebagai contoh antara isi kandungan di dalam 4 Buku tersebut, Pemohon kagum dan berkeinginan menjadi seperti Hassan Nashrullah iaitu pemimpin Hizbullah, gerakan Syiah di Lubanan. Kekaguman terhadap tokoh syiah ini jelas menampakkan kepercayaan Pemohon terhadap Syiah;

(e) Sebagai contoh lain, Pemohon juga memburuk-burukkan khalifah kedua Bani Umaiyyah iaitu Yazid anak Saidina Mu'awiyah bin Abu Sufyan dengan mengatakan Yazid adalah golongan fasik dan menyamakan seperti Zionis dan Hitler. Ungkapan "kita tidak boleh mengamalkan politik kotor ala Muawiyah dan Yazid" jelas menghina sahabat Rasullah dan adalah merupakan ungkapan yang sering digunakan oleh penganut Mazhab Syiah;

(f) Isi kandungan 4 Buku tersebut juga memuatkan ayat provokasi "wajib kita tebus kembali" untuk membangkitkan rasa marah terhadap Saidina Abu Bakar RA dan para sahabat beliau (dalam peristiwa rampasan Tanah Fadak) dan provokasi sebegini dikhuatiri akan mewujudkan perbalahan antara golongan Ahli Sunnah Wal Jamaah dan golongan Syiah seperti yang berlaku di Syria sekarang;

(g) Dalam hal ini, saya telah dinasihatkan oleh pakar-pakar daripada JAKIM dan sesungguhnya percaya bahawa memandangkan negara ini mengamalkan ajaran Islam berdasarkan ajaran Ahli Sunnah Wal Jamaah, pertembungan dua fahaman antara Ahli Sunnah Wal Jamaah dan Syiah ini dikhuatiri boleh mencetuskan ancaman keselamatan dikalangan ummah seperti yang berlaku di negara Arab sekarang;

(h) Secara keseluruhannya, 4 Buku tersebut banyak mengandungi idea-idea yang mempropagandakan pegangan Syiah dan perbuatan Pemohon mendewa-dewakan ekstrimis Syiah bersenjata, Hizbullah

A di Lubanan dikhuatiri akan menimbulkan kemarahan umat Islam di Malaysia. Pemikiran sebegini boleh membawa kepada kecelaruan antara umat Islam dan seterusnya mencetuskan suasana tidak tenteram di dalam ummah sehingga boleh membawa kepada perpecahan umat Islam yang mana akan memprejudiskan ketenteraman awam sekiranya ia dibiarkan berleluasa;

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(i) Tindakan saya untuk mewartakan dan 4 Buku tersebut sebagai buku yang dilarang pencetakan dan pencetakannya adalah selaras dengan bidang kuasa yang diberikan kepada saya untuk mengelakkan kekeliruan orang awam secara khususnya umat Islam di negara ini dengan karya-karya yang cenderung ke arah ajaran syiah yang ditulis oleh Pemohon dalam 4 Buku tersebut;

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(j) Oleh itu, suatu keputusan dan tindakan segara harus dilaksanakan bagi menyekat 4 Buku tersebut daripada, antara lainnya, terus dicetak, diterbit dan/atau dipasarkan kepada umum di negara ini.

D **[10]** Based on those reasons, the respondent averred that the 'prohibition is justified as it is prejudicial to public order and security'. This averment can be found in para. 20 of the respondent's affidavit at p. 143 of the rekod rayuan:

E Berdasarkan dengan alasan-alasan di atas, saya berpuashati bahawa Buku tersebut wajar untuk dikenakan perintah larangan di bawah seksyen 7(1) Akta Mesin Cetak dan Penerbitan, 1984 (Akta 301) **kerana ia memudaratkan ketenteraman awam dan keselamatan** sebagaimana yang dibutirkan di dalam Perintah Larangan tersebut. (emphasis added)

Decision Of The High Court

F **[11]** The learned High Court Judge was of the view that the fact that there was no actual occurrence of public disorder during the four and seven years the books had been in circulation ought not to be made the true and correct test in determining the legality of the order as the phrase "prejudicial to public order" as found in sub-s. 7(1) does not necessarily refer to the existence of an actual public disorder but include anything which has the

G 'potential' to disrupt public order. She found support in the decision of *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs) Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 129 as referred by the Federal Court in *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81 and also the Federal Court in *Darma Suria Risman Saleh v. Menteri Dalam Negeri,*

H *Malaysia & Ors* [2010] 1 CLJ 300; [2010] 3 MLJ 307 and the Indian Supreme Court case of *S.K. Kader v. State of West Bengal* AIR 1972 SC 1647. Her Ladyship was of the view that it is the duty of the Government to preserve public peace and order as observed by Raja Azlan Shah J (as His Majesty then was) in *Public Prosecutor v. Ooi Kee Saik & Ors* [1971] 1 LNS 113; [1971] 2

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MLJ 108. She noted that the respondent's grounds in making the order were essentially from the advice given by his officers, JAKIM and from his own appreciation of the contents of the publication.

[12] She found it was lawful for the respondent to act in the way he did to ban the four books under sub-s. 7(1) on the ground that the book is likely to be prejudicial to public order. Her Ladyship quoted the Court of Appeal in *Arumugam Kalimuthu v. Menteri Keselamatan Dalam Negeri & Ors* [2013] 1 LNS 296; [2013] 5 MLJ 174 on the scope and extent of sub-s. 7(1) and accepted the submission of learned Senior Federal Counsel that the respondent's decision in making the impugned order did not suffer from illegality since the reasoning affirmed in his affidavit were in fact based on public order grounds.

[13] Her Ladyship also found that the respondent did not take into account irrelevant consideration when he relied on the decision of the Jawatankuasa Fatwa as the content of the publication relates to Islamic law matter and therefore it would be reasonable for the Minister to place reliance on the decision of the Jawatankuasa Fatwa.

[14] The learned High Court Judge also found that the order did not suffer from procedural impropriety as the appellant was given the opportunity to be heard when he was called for a meeting to discuss on the proposed ban but he chose not to attend.

[15] Her Ladyship was also of the view that since Act 301 was enacted pursuant to the provision of art. 10(2)(a) of the Federal Constitution which aims to limit freedom of expression of individuals on the grounds, *inter alia*, prejudicial to public order as stated in sub-s. 7(1), the appellant's argument that his right under art. 8 of the Federal Constitution has been infringed, that he was not treated equally with the publishers of other magazines and/or newspaper which had published works from three of the four books earlier without being similarly prohibited, cannot be sustained. Her Ladyship stressed that the appellant's right under art. 8 is therefore not absolute.

[16] Based on the above, the appellant's application for judicial review was dismissed.

Our Decision

[17] Article 8 of the Federal Constitution provides for equality before the law for all Malaysia citizens. While art. 10 allows the right to freedom of speech and expression. However, as rightly said by the learned High Court Judge and submitted by learned Senior Federal Counsel, the rights conferred under the articles are not absolute as under cl. 2 of art. 10, Parliament is empowered to restrict these rights through the provisions of the law and Act 301 is one of the laws enacted pursuant to that restriction which aims to limit

freedom of expression, *inter alia*, in the interest of the security of the Federation and public order. Therefore the validity of the law ie, sub-s. 7(1), is not in question here. What is to be determined is whether, applying the factual matrix of the instant case, the order is validly made.

[18] It cannot be disputed that sub-s. 7(1) of Act 301 gives absolute discretion to the Minister to make such order as the impugned order. See *Arumugam a/l Kalimuthu, supra.* However, it also cannot be disputed that such discretion must also have legal limits to avoid it being abused. This principle had been emphasised by the Federal Court in *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135 at p. 148, and have been quoted by many other decisions thereafter:

> Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression …

[19] We must also bear in mind, that it is the appellant's contention that his fundamental rights under the Federal Constitution have been infringed. The recent trend in judicial review as decided by our apex court is that the test used had advanced from the subjective to that of the objective test, if state action affects fundamental right, the court will not only look into procedural fairness but also substantive fairness. See: *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors* [2014] 6 CLJ 541; [2014] 4 MLJ 765. Hence in this instance, this court is entitled to look not only at the procedural aspects but also at the substance or merits of decision made by the Minister. It is therefore not wrong for this court to enquire as to the reasonableness or fairness of the Minister's decision.

[20] Learned Senior Federal Counsel submitted that the learned High Court Judge had followed the objective test. With respect, we disagree. In considering the Minister's affidavit only and in failing to consider the facts presented by the appellant on the nature and contents of the four books and in treating the prior circulation as irrelevant to the Minister's assertion as to the potentiality of the four books to prejudice public order, we find that the learned High Court Judge had in fact applied the subjective test. Having said that, the cases of *Karam Singh, supra* and *Nasharuddin Nasir, supra*, which used subjective test could not prevail over *Titular Roman Catholic*'s case *(supra)*. Consequently, with due respect, the learned High Court Judge erred when she placed reliance on those two cases.

[21] The order which prohibits the four books, describes the four books as "is likely to be prejudicial to public order". The learned High Court Judge in para. 26 of Her Ladyship's grounds of judgment viewed that the phrase "prejudicial to public order" does not necessarily refer to the existence of an actual public disorder, but include anything which has the "potential to disrupt public order". With due respect, we feel the emphasis ought to be put on the words "likely to be prejudicial to" and not merely "prejudicial to public order" as sub-s. 7(1) of Act 301 provides for two situations, one is where the publication is prejudicial to public order and the other where it is likely to be prejudicial to public order. In this instant case, the order states that it "is likely to be prejudicial". If it is prejudicial to public order, then it must be shown the existence of the actual public disorder. But if it is "likely to be prejudicial to public order", as in the instant case, then it would cover anything which has the potential to disrupt public order. So in this context, even though we agree with the learned High Court Judge, that what needs to be proven here is not "actual public disorder" but anything which has the potential to disrupt public order; it is not because of the words "prejudicial to public order" but because the order states "is likely to be prejudicial to public order". After saying those, we must also say, to be fair to the learned High Court Judge, Her Ladyship did refer to "the books are likely to be prejudicial to public order and security" in other paragraphs of her judgment.

[22] Further, as shown in para. 10 of this grounds of judgment, the Minister himself seems to be confused, with due respect, when in para. 20 of his affidavit, he averred that the prohibition is justified as it is prejudicial to public order and security, when the order states is likely to be prejudicial.

[23] If it is indeed prejudicial to public order, there is no evidence before us of any chaos or disorder that is happening in this country at present, or even at the time the order was made, caused by the circulation of the four books. That reasoning is completely unsustainable.

[24] If we go by "it is likely to be prejudicial to public order", the facts need to be examined to see whether there is any convincing evidence for such potential to happen. The learned High Court Judge, with due respect, did not explain what is "the potential". In para. 36 of her grounds of judgment, Her Ladyship merely quoted paras. 10 and 14 of the decision of this court in *Arumugam*'s case, *supra*, and concluded in para. 37 of her grounds of judgment that the impugned order does not suffer from illegality since the reasoning offered in the Minister's affidavit were in fact based on public order grounds. Learned Senior Federal Counsel had also urged us to follow this decision as he contended that the four books have the potential to disrupt the even tempo of the life of the community.

[25] With due respect, we feel that is too simplistic an approach. The case of *Arumugam, supra*, is distinguishable as the book in that case pertained the Kampung Medan racial disturbance, which in the words of the learned High Court Judge in that case, was a public order and national security issue in itself. On appeal, the decision of the High Court Judge was affirmed by this court.

[26] Whereas in this instant case, the prohibition was ordered on the ground that the four books contain elements which could confuse Muslims in this country, which confusion could lead to public disorder. The reasons given are almost similar to two other cases, one of which is *Dato' Seri Syed Hamid Syed Jaafar Albar (Menteri Dalam Negeri) v. SIS Forum (Malaysia)* [2012] 9 CLJ 297; [2012] 6 MLJ 340. This case was also quoted by learned counsel for the appellant in his submission as well as by the learned High Court Judge in para. 20 of her grounds of judgment.

[27] In *SIS Forum, supra*, the book entitled 'Muslim Women and the Challenges of Islamic Extremism' was banned also under sub-s. 7(1) of Act 301 on the ground it was prejudicial to public order as the book was alleged to have infringed JAKIM's guidelines as its contents could allegedly confuse Muslims, in particular Muslim women. The book had been in circulation for about two years before the ban. The High Court had allowed the respondent's application to quash the decision of the Minister/appellant. On appeal, this court dismissed the appeal with costs and held as follows:

> (1) The appellant's decision to ban the book was flawed and not exercised in accordance with s. 7(1) of the Act;
>
> (2) If in the two years the book was in circulation no prejudice to public order had occurred, it followed that the book was in the first place unlikely to be prejudicial to public order. To be satisfied the book was prejudicial to public order in the face of the fact no such prejudice had occurred during the two years it was in circulation was so outrageous in its defiance of logic that it fell squarely within the meaning of *Wednesbury* unreasonableness and of irrationality;
>
> (3) Even if the book infringed JAKIM guidelines, that did not address the issue of it being prejudicial to public order.

[28] The decision in *SIS Forum, supra*, was followed by the High Court in a later case, *ZI Publication Sdn Bhd v. Timbalan Menteri Dalam Negeri & Ors* [2014] 3 MLRH 708. This is the other case mentioned earlier which has almost similar facts with this instant case. In that case, two books, namely "Allah Kebebasan dan Cinta" (national language version of the book) and "Allah Liberality and Love" (English version of the book) were ordered to be banned under sub-s. 7(1) of Act 301 on the ground that the two books were

prejudicial to public order and morality. Aggrieved, the applicant filed for a judicial review under O. 53 of the Rules of Court 2012 to quash the order. The High Court allowed the application. The High Court had stated:

> (15) In the instance, the English version had been in circulation since June 2011. The prohibition was only made almost one year later, when the book was translated into the national language. If it's true that the book is prejudicial to public order, why was no action taken to ban its English version when it was first circulated? Why was the prohibition made only when it was translated into the national language?
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> (16) As I understand it, the root of the respondent's concern is "kecelaruan keagamaan" or religious confusion. As the authority only decided to ban the book when it was translated into the national language, does it mean that only the Malay speaking readers would be confused while the English speaking readers would not, when reading the book in the first place? I cannot help but to ponder on this because the step taken to ban the book only came about when the book was translated into the national language.
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> (17) In any event, the High Court case in the SIS Forum held that tendency of the book to confuse Muslim was not public order issue. Like in SIS Forum's case, the respondent in this instance has failed to show that any breach of the peace occurred or was threatened as a result of the book. It must again be emphasised that the book had been in circulation for about two weeks before it was banned, with its original version in English having been circulated in the local market since June 2011.

[29] On appeal by the respondent, this court on 13 January 2015 had dismissed the appeal and affirmed the decision of the High Court.

[30] Like *SIS Forum, supra*, and *ZI Publication, supra*, the four books in this instance had also been in circulation in the market prior to the order. As submitted by learned counsel for the appellant, the dates of circulation were as follows:

> (a) '*Sebongkah Batu di Kuala Berang*', since March 2011 namely, around 4 years prior to the prohibition Order;
>
> (b) '*Karbala*', since 2008 namely, around 7 years prior to the prohibition Order;
>
> (c) '*Tiga Kali Seminggu*', since November 2010 namely, around 4 1/2 years prior to the prohibition Order; and
>
> (d) '*Ingin Jadi Nasrallah*', since 2010 namely around 5 years prior to the prohibition Order.

[31] The respondent has also not disputed the number of copies of each of the four books printed for circulation which are as follows:

(a) '*Sebongkah Batu di Kuala Berang*': 3000 copies for the first print and 2000 copies for the second print;

(b) '*Karbala*': Exact information is not available. But a few thousands as well in 2 prints.

(c) '*Tiga Kali Seminggu*': 3000 copies for the first print and 1000 copies for the second print; and

(d) '*Ingin Jadi Nasrallah*': 1000 copies for the first print.

Further, it was also shown that the Malaysian National Library had ordered 1089 copies of the book 'Karbala' on 24 November 2008.

[32] The difference between the prohibition orders in *SIS Forum, supra*, and *ZI Production, supra*, with the instant order is that in the former, the orders state "is prejudicial" while in this instant case it says "is likely to be prejudicial". Of course it is easier to interpret the words "is prejudicial" because it connotes the actual and current occurrence of public disorder which is not in evidence in this case. But the words "is likely" show it has potential to happen, might happen or probably to happen. See: *Concise Oxford English Dictionary*, 12th edn, 2011. We opine as it is potentially or probably to happen, the answer to a question of whether the four books are likely to be prejudicial to public order must be based on the facts of the case. The facts of the instant case show that the four books had been in circulation for many years, between four to seven years before the order. Thousands of copies had been printed and some are even published in Government's related periodical or publication and even kept in the National Library. Some had even won writing awards. Looking through the evidence as presented before us, so far, until the date of the order, there had not been the slightest evidence of public disorder that had occurred. Hence, if in the many years the four books were in circulation, no prejudice to public order had occurred, to borrow the words of this court in *SIS Forum, supra*, it follows that the four books were in the first place unlikely to be prejudicial to public order. After all these years, for the respondent to suddenly say that he was satisfied that the four books are likely to be prejudicial to public order and that "suatu keputusan dan tindakan segera harus dilaksanakan bagi menyekat empat buku tersebut …" is in such outrageous defiance of logic that it falls squarely within the meaning of *Wednesbury* unreasonableness, and of rationality. See *SIS Forum, supra*.

[33] This court in *Sepakat Efektif Sdn Bhd v. Menteri Dalam Negeri & Anor And Another Appeal* [2015] 2 CLJ 328 had applied the principle extolled in the Indian Supreme Court decision of *S Rangarajan v. P Jhagivan Ram & Ors* 1989 2 SCC 574:

> Court's commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interests. It should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

[34] What is the anticipated danger to public order that the four books will create? The danger is stated in paras. 15(d), (e) and (f) of the respondent's affidavit. These pertain to the books '*Tiga Kali Seminggu*' and '*Ingin Jadi Nasrallah*'. To this, learned counsel for the appellant submitted that the objection to '*Tiga Kali Seminggu*' was based on one line in the preface of a book of 210 pages; which had led to the prohibition of all 15 short stories in the book which had nothing to do with the one line objected to in the preface. Of these 15 short stories, three are award-winning and 12 had been published in various respectable publications such as *Dewan Sastera, Dewan Budaya, Dewan Siswa, Mingguan Malaysia* and *Utusan Melayu.* While the book '*Ingin Jadi Nasrallah*' which consists of 33 poems, the objection was on the line "wajib kita tebus kembali" found in one of the poems with the same title which is alleged to propagate the Shia school. The book is also alleged to glorify the Hezbollah group in Lebanon which is alleged to be an extremist Shia group as well as its leader, Hassan Nasrallah. Learned counsel for the appellant submitted that the respondent failed to take into account the following relevant considerations:

(a) The background to the first publication of the poem 'Ingin Jadi Nasrallah' where the appellant had contributed the poem for a special edition of the *Dewan Sastera* magazine in respect of the Lebanon War (against Israel) which was an initiative by Dewan Bahasa dan Pustaka to express solidarity with the people affected by that war in which Hezbollah was at the forefront.

(b) Support and sympathy for this group came not only from the appellant but also from the Government of Malaysia (through the former Foreign Minister Datuk Seri Syed Hamid Albar), former Prime Minister Tun Dr Mahathir Mohamad, Utusan Malaysia, PAS Youth and the *Dewan Sastera* magazine.

[35] Therefore, learned counsel for the appellant further submitted, it is clear that support for this group is widespread and has not caused disunity that is prejudicial to public order and security. He also submitted, the respondent failed to provide any reasons why sympathy for Hezbollah will cause a split amongst Muslims and prejudice public order or security.

[36] The line 'wajib kita tebus kembali' is alleged to be an attempt to instigate hatred towards Saidina Abu Bakar and his companions with regard to the event of the dispossession of the Fadak Land and this is said to be a provocation which may give rise to a conflict between followers of Ahli Sunnah Wal Jamaah and Shias.

[37] He further submitted in the poem 'Ingin Jadi Nasrallah', the appellant had never mentioned the names of Saidina Abu Bakar RA or his fellow companions and had not referred to the Fadak Land as a dispossessed land. Therefore, there is neither evidential nor reasonable basis for the Minister to state that the line is an attempt to instigate hatred towards Saidina Abu Bakar and his companions with regard to the Fadak Land.

[38] We cannot but agree with learned counsel for the appellant on this. As alluded before, we had ourselves read the four books. We could not understand how the four books could create public disorder or a threat to security. For example in '*Tiga Kali Seminggu*' the short story "Rindu Ini Luar Biasa" is about two people falling in love during their fight to elevate the use of Bahasa Malaysia and how position, status and power can change people's viewpoint. The short story of 'Bulan Penuh di Saigon' is about a woman who was determined to look for her real mother upon discovery that she was actually an adopted child, after her adopted mother passed away. The short story of "Cinta Medeni" to us is a pure love story.

[39] Now take the book of "*Ingin Jadi Nasrallah*". The poem "Balada Orang Berdosa" for example is nothing but the expression of guilt by someone who feels that he has committed so much sins that now he has repented and shows remorse and ask for forgiveness from his Creator. The poem "Baitullah" is nothing but about the Baitullah, the House of God for Muslims.

[40] Those are some of the examples. What we want to stress here is where is the part that could create public disorder and would threaten national security, except for those few lines mentioned earlier, which we agree with learned counsel for the appellant, are not evidence of prejudice to public order and security? Merely stating that the respondent was following the decision of Jawatankuasa Fatwa in our view is not sufficient to prove that the four books are likely to be prejudicial to public order and security as Jawatankuasa Fatwa's decision has not mentioned the four books. To state that the prohibition is on the recommendation of Bahagian Kawalan Penerbitan dan Teks Al Quran and on advise of experts from JAKIM without showing more is also in our view not enough to show that the four books are likely to be prejudicial to public order and security. Such statement becomes bare assertion especially so when the prohibition is being challenged by the appellant.

[41] In *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals* [1997] 1 CLJ 665, it was held, *inter alia*, by this court:

> 14. The Minister may not be procedurally compelled to furnish his reasons. But if he gives no reasons or inadequate reason, then it is open for a Court to conclude that he had no good reasons or inadequate reasons for making the decision he did. The reasons he gives are, of course, subject to curial scrutiny for the purpose of determining whether he had exercised his discretion in accordance with law.

[42] It also perplexed us how do '*Karbala*' and "*Sebongkah Batu di Kuala Berang*" offend sub-s. 7(1) of Act 301 when there is no specific allegation pointed out by the respondent in his affidavit on these two books.

[43] Even if indeed it is true that those few lines show the four books are likely to be prejudicial to public order and security, is it justified for the respondent to prohibit the whole four books? As we mentioned earlier, some are merely love stories. The definition section of Act 301 is found in s. 2. In s. 2, "publication" is defined not only to include a book but also a document. "Document" is defined, *inter alia,* as paper on which is printed, typed, written and also includes book. As such, if certain pages of the four books are found to offend sub-s. 7(1) of Act 301, the Act allows for the removal of the pages which are "documents" and thus "publication" under Act 301. See *ZI Publication, supra*. As such, the prohibition of the whole four books in our considered view is a very drastic act, irrational, unreasonable, disproportionate and tainted with procedural impropriety.

[44] In conclusion, we would like to again emphasise that we are only concerned with what is legally valid according to legal norm and principles. Based on the circumstances and facts of this case, we therefore find that the order is not made in accordance with sub-s. 7(1) of Act 301 and therefore illegal. We also find that the order is indeed a restriction on the appellant's constitutional and fundamental right to freedom of expression. Although admittedly the right is not absolute, we agree with learned counsel for the appellant that the court must nonetheless give primacy to it. Only in the clearest case of potential prejudice to public order that this right can be suppressed, which in our considered opinion, is not so in this instant case.

[45] Those reasons in our view are enough to enable us to allow this appeal without having to delve on other issues. The appeal is therefore allowed with costs of RM20,000 subject to payment of allocator fee. The appellant is granted relief as in paras 1.1 and 1.2(a), (b) and (c) of the judicial review application. On relief for damages, we note there was no argument put by the parties before us, hence we will not make any order for that relief.